

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein and, in addition, the stipulation of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are adopted by the Appeals Board as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge, in assessing one hundred percent (100%) of the liability to the Kansas Workers Compensation Fund, found that the respondent had shown that claimant was a handicapped employee as defined in K.S.A. 44-566 prior to the date of injury on January 19, 1987. The Administrative Law Judge also found that respondent had knowledge of claimant's preexisting handicap having been advised of claimant's prior knee surgery and of claimant's ongoing swelling problems in her knee during her employment. The Appeals Board adopts said findings and conclusions as its own.

With regard to the issue of the reasonableness of the settlement, the Administrative Law Judge held that the Special Administrative Law Judge, by approving the settlement, necessitated a finding that the award to claimant was reasonable by operation of law. The Appeals Board does not agree with this logic. However, the Appeals Board does agree that the settlement itself, based upon the facts in this case, was reasonable. Claimant had been assessed a fifty percent (50%) functional impairment to her leg as a result of the injury suffered to her knee on January 19, 1987. The basis for the settlement was an eighty-three percent (83%) functional impairment to claimant's entire leg. While the settlement percentage is higher than that provided by the treating physician, it is noted that the settlement eliminated claimant's right to future medical and further resolved claimant's claim for any contribution to her current back problems. The medical report of Dr. Bernard Poole dated July 17, 1991, shows a definite contribution to claimant's ongoing back problems from this most recent knee injury.

In resolving not only the future medical but also the low back problems the respondent has clearly resolved potential liability in excess of the fifty percent (50%) functional impairment to claimant's knee. Thus, additional compensation due claimant to settle these additional issues would be appropriate. As such, the Appeals Board finds the settlement with claimant for an eighty-three percent (83%) functional impairment to claimant's leg is reasonable under the circumstances.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl dated July 10, 1995, should be, and is hereby, affirmed in all respects and the Kansas Workers Compensation Fund shall be responsible for all costs and expenses associated with the settlement of this case with claimant and shall fully reimburse respondent for any and all such costs and expenses.

The fees necessary to defray the expense of the Workers Compensation Act are assessed against the Kansas Workers Compensation Fund to be paid as follows:

Don K. Smith & Associates	
Deposition of Thomas Lee Burton	\$281.50
Kelley, York & Associates, Ltd.	
Deposition of Bernard T. Poole, M.D.	\$179.35
Deposition of Marie E. Tegarden	\$219.69

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Julie Bedinghaus, Great Bend, KS
Orvel Mason, Arkansas City, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director